

Claimant sustained an amputation of the right second digit and 50 percent of the right second metacarpal. The Assistant Director found claimant has a 43 percent permanent partial impairment of the right hand. Respondent argues the Assistant Director

improperly considered Dorland's Medical Dictionary definitions and contends the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised), allows an impairment rating of only 20 percent of the hand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the Award should be affirmed.

As a result of a compensable injury, claimant underwent amputation of his right second finger and 50 percent of his right second metacarpal. Two physicians provided ratings introduced by stipulation. Dr. George L. Lucas rated the impairment as 20 percent of the right hand. Dr. Pedro A. Murati rated the impairment as 43 percent of the right hand.

Respondent argues that the rating by Dr. Murati is not consistent with AMA Guides which K.S.A. 44-510d provides are to be used to determine permanent impairment. Respondent points specifically to page 25 of the AMA Guides which states:

An amputation through the metacarpal bone is considered to be 100% impairment of the finger and is not given extra value.

Since the AMA Guides otherwise provide that amputation of 100 percent of the index finger is equivalent to 20 percent of the hand, respondent argues claimant's impairment should be 20 percent of the hand with no extra impairment for the amputation through the metacarpal bone.

Claimant, on the other hand, relies on provisions in the statute and related regulations which indicate amputation through or below any joint is to be considered a loss to the next higher schedule. K.S.A. 44-510d(a)(6) and K.A.R. 51-7-8(d). Claimant argues that the AMA Guides conflict with the statute and regulation and that the statute and regulation should be followed.

The Board agrees that the statute and regulation conflict with the AMA Guides. By directing a rating at the next higher schedule, both imply that the rating should be something more than the finger only. The Board would agree with respondent's argument if only the regulation called for rating at the level of the hand. But, in our view, the statute does also. The Board concludes that when the AMA Guides conflict with a specific statute, the specific statute should prevail.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Assistant Director Brad E. Avery, dated December 24, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
Kerry McQueen, Liberal, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director